

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 17 2003

CATHY A. CATTERSON

U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

T.B.M., INC.,

Defendant - Appellant.

No. 02-16846

D.C. No. CV-97-00169-WDB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
William D. Browning, District Judge, Presiding

Argued and Submitted November 4, 2003
San Francisco, California

Before: THOMPSON, TROTT, and CALLAHAN, Circuit Judges.

T.B.M., Inc appeals the district court's decision enforcing its purported
settlement agreement with the United States without first holding an evidentiary

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hearing. T.B.M. asserts that final written authorization of certain Department of Justice personnel was a condition precedent to formation.

Under Callie v. Near, “the district court may enforce only *complete* settlement agreements. Where material facts concerning the *existence* or *terms* of an agreement to settle are in dispute, the parties must be allowed an evidentiary hearing.” 829 F.2d 888, 890 (9th Cir. 1987) (emphasis in original) (internal citations omitted).

Here, T.B.M. requested a hearing to address the factual issue of whether final written execution of the agreement by the Department of Justice was a condition of formation. The district court held no hearing on this issue before it granted the government’s motion to enforce the settlement agreement.

This contravenes Callie, because “[w]hether the parties *intended* only to be bound upon the execution of a written, signed agreement is a factual issue,” one that if disputed, entitles the parties to an evidentiary hearing. Id. at 890-91. On the record before us, it is unclear whether or not the government intended to be bound before the last signature was placed upon the agreement. As such, it is necessary that the record be more fully developed before the decision whether to enforce the agreement can be made.

Because an appropriate exercise of discretion required an evidentiary hearing to resolve the dispute of fact regarding whether or not final written authorization was required, we vacate the district court's order and remand the case for an evidentiary hearing.

VACATED and REMANDED